

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA } DOCKET NO. 1:09CR12
 }
 }
vs. } MOTION FOR RELIEF UNDER
 } TITLE 18 U.S.C. §3771
 }
MICHAEL BRUCE DARCY, Defendant. }

NOW COMES the United States of America, by and through Edward R. Ryan, Acting United States Attorney for the Western District of North Carolina, and moves the Court to order Defendant not to contact the victim in the above-captioned case. The government makes this motion pursuant to 18 U.S.C. §§3771(a)(1) and (c)(1) in order to afford the victim her right to be reasonably protected from Defendant. In support of this motion, the government offers the following:

(1) In February, 2009, a federal grand jury sitting in the Western District of North Carolina indicted Defendant on one count of transportation of a minor in interstate commerce in order to engage in sexual activity, in violation of 18 U.S.C. §2423(a), and on one count of traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor, in violation of 18 U.S.C. §2423(b). The government believes that, should this case go to trial, the evidence would show that while Defendant was a Beech Mountain Police Officer, he engaged in a two year sexual relationship with the victim. This relationship began when Defendant was approximately 43 three years old and the victim was 14 years old.

(2) Defendant has been detained since his arrest on February 24, 2009 (Magistrate Judge Howell ordered Defendant detained On March 13, 2009).

(3) In an interview with FBI agents at the time of his arrest, Defendant admitted that he and the victim, whom he met when she was a freshman in high school, began a sexual relationship in January of her sophomore year. He also admitted that during a trip to Carowinds

the following May, he and the victim had sex in a hotel, which investigators have determined is located in South Carolina. This conduct resulted in the federal charges. Defendant moved to suppress his confession, but after a hearing on May 5, 2009, Magistrate Judge Howell recommended that the motion to suppress be denied.

(4) On or about May 18, 2009, the victim's mother informed the FBI that she had intercepted two letters that Defendant sent to the victim. These letters were dated May 12, 2009. See attached Exhibit 1.

(5) Thus far, Defendant has not been ordered not to have contact with the victim. Neither the victim, nor her mother, want to have any contact with Defendant. It is the undersigned's belief that the victim would suffer emotional harm should Defendant be successful in his efforts to contact her. Also, Defendant's attempt to contact the victim may rise to a criminal violation of Title 18 U.S.C. § 1512, which prohibits a person from tampering with a witness and/or victim.

(6) On May 28, 2009, pursuant to L.Cr.R. 47.1(B), the undersigned consulted with Defendant's attorney, Fredilyn Sison. Ms. Sison advised the undersigned that she told Defendant not to send any more letters to the victim. However, as Defendant has displayed an incredible lack of good judgment from the time he began his relationship with the victim up to May 12, 2009, when he sent letters to the victim, the undersigned has no confidence that Defendant will follow the advice of his attorney. The undersigned hopes that Defendant will follow a judge's order.

(6) The Crime Victim's Rights Act, codified at 18 U.S.C. §3771 (a)(1) affords crime victims the right to be reasonably protected from the accused. Additionally, 18 U.S.C. §3771(c)(1) directs the government to make sure that victims are accorded this right. Thus, the government moves the Court for an order commanding Defendant not to contact the victim, hereinafter identified as Jane Doe #1, directly or indirectly through friends, family members or others, through the use of the telephone, mail or any other means.

RESPECTFULLY SUBMITTED, this the 28th day of May, 2009.

EDWARD R. RYAN
ACTING UNITED STATES ATTORNEY

/s Kimlani M. Ford

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CERTIFICATE OF SERVICE

The foregoing document was filed electronically via ECF and was served on counsel for the Defendant via ECF. The email address for defense counsel is listed in ECF as follows:

Fredilyn_Sison@fd.org

This the 28th day of May, 2009.

EDWARD R. RYAN
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/s Kimlani M. Ford

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